

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL NO.230 OF 1994

Shri Kalidas Jamadar Sable

...Appellant.

V/s

1. Mugutrao Balwant Sable

2. The State of Maharashtra

...Respondents.

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None for the appellant.

None for the respondent No.1.

Mr. D.P. Adsule, APP for the State.

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CORAM: V.M.KANADE,J.

DATE: 7th February, 2005

ORAL JUDGMENT:

1. None for the appellant. None for the respondent

No.1.

2. This appeal is pending in this Court for last 10 years. Since neither the appellant nor respondent No.1 have remained present, I have gone through the Judgment and Order of the Trial Court as also the evidence adduced by the complainant and proposed to decide the Criminal Appeal on merits.

3. Brief facts are as follows :-

4. Appellant is Sarpanch of Grampanchayat Shivthar,

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District Satara. A complaint was filed by the appellant against the respondent No.1 - accused in the Court of Joint Judicial Magistrate, First Class, Satara.

5. It is the grievance of the complainant that on 28/6/1992 and 30/6/1992, respondent No.1, without obtaining requisite permission of the Grampanchayat encroached upon the land of the Grampanchayat and erected a structure on the said plot. It was also alleged in the complaint that the respondent No.1 had committed an offence of public nuisance by encroaching upon the public road which belonged to the Grampanchayat. It was also alleged that he had committed misconduct by erecting shed on the public road. A complaint, therefore, was filed under section 52(4), 53(2) of the Bombay Village Panchayat Act, 1958 and under section 290 and 427 of the Indian Penal Code.

6. The complainant examined himself as P.W.1. He has stated that he was Sarpanch in the Grampanchayat since 1989 and that the accused was the owner of CTS No.523 on which the accused had his residential house and open space. P.W. 1 has stated that on 28/6/1992, the accused started construction on that open space and

that he did not obtain permission for the construction from the Grampanchayat. He, therefore, served notice upon the accused calling him to stop the work of construction. However, the accused continued the work of construction on the said open space. He has, therefore, stated that the accused made an encroachment of 7 ft. on the East-West side and 26 ft. on the North-South side of the Grampanchayat Road. In the cross-examination, he has admitted that no Resolution was passed by the Grampanchayat to institute this case against the accused. He also admitted that he did not obtain permission from B.D.O. to institute this case. A suggestion was made to the complainant that the accused belonged to the opposite group in the village and that the accused was the President of the Consumer Society. The complainant did not examine any other witness.

7. The accused has examined one witness i.e. D.W.1 - Pushpashil Sabale in support of his case. D.W. 1 has stated that he was the member of Grampanchayat for last four years. He has stated that there are two groups in the village and that the Sarpanch was from the group of one Kisanrao Sabale Patil and the accused was in the group of Babanrao Sabale Patil. This witness has stated that on 29/6/1992, the accused had

made an application to the Grampanchayat for permission in respect of his proposed construction. He has stated that on the same day, the Sarpanch, Secretary member Bharat Sabale, Sanjay Kamble and Balkrishna Anadrao visited the place of the accused and they found that a shed was already in existence on the land owned by the accused. However, the shed was in a dilapidated condition. D.W. 1 has stated that the accused wanted to change the poles and he did not propose to construct a new shed. D.W. 1 has stated that the oral permission was granted to erect new poles. D.W.1 has stated that no encroachment was made on the Grampanchayat Road.

8. From the evidence of the complainant, it can be seen that he has not given any particulars and from his evidence it cannot be said that the complainant has proved that the accused had started new construction on the land owned by the Grampanchayat. He has not produced the City Survey Extract. Further, admittedly, no Resolution was passed in the Grampanchayat to initiate prosecution against the accused. Permission also was not obtained from B.D.O. It has come on record that there were two groups in the village and the accused belonged to the other group i.e. the group of Babanrao Sabale. It is not

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proved by the complainant that he had served notice on the accused which was allegedly sent by him asking the accused to stop the construction. Thus, the complainant has miserably failed in establishing his case beyond the reasonable doubt. The Trial Court, therefore, has correctly assessed the evidence and acquitted the accused. Appeal is, therefore, dismissed.

V.M. KANADE, J.